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# Supreme Court of the United States

October Term, 1974

No. 74-290

MAXINE W. SIEGFERTH, Guardian of ROBERT H. SIEGFERTH, an Incompetent Person, *et al.*,
*Petitioners,*

v.

BALTIMORE & OHIO RAILROAD CO.,
*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## RESPONDENT'S BRIEF IN OPPOSITION

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# Supreme Court of the United States

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## RESPONDENT'S BRIEF IN OPPOSITION

### OPINION BELOW

The decision of the Court of Appeals in this case has been reported. *Siegferth v. Baltimore & Ohio Railroad Co.*, 498 F.2d 392 (6th Cir. 1974).

## ADDITIONAL STATUTES INVOLVED

### Ohio Revised Code Section 2503.20

When requested by the supreme court, the reporter of the supreme court shall attend its sessions and consultations and shall report and prepare its decisions for publication under its direction. Such reporter shall prepare for publication and edit, tabulate, and index those opinions and decisions of any court of appeals furnished him for publication by any such court, and such opinions and decisions of any of the inferior courts, as may be designated by him and approved by the chief justice of the supreme court.

No cases in the court of appeals shall be reported for publication except those selected by the several courts of appeals, or by a majority of the judges thereof. Such reporter may, with the consent of the supreme court, appoint assistants necessary to carry on the work of his office. The compensation of each of such assistants shall not exceed two thousand dollars a year, to be paid out of the state treasury upon the warrant of the auditor of state.

Whenever a case is reported for publication, the syllabus of such case shall be prepared by the judge delivering the opinion, and approved by a majority of the members of the court. Such report may be per curiam, or if an opinion is reported, such opinion shall be written in as concise form as may be consistent with a clear presentation of the law of the case. Opinions for permanent publication in book form shall be furnished to the reporter and to no other person. After August 15, 1919, all such cases must be reported in accordance with this section before they shall be recognized by and receive the official sanction of any court.

**Act of March 25, 1872 (69 Ohio Laws 49):**

## AN ACT

To prevent accidents by Railroads

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That any railroad in this state using steam locomotive engine for the transportation of passengers and freight, shall be required to have attached to each and every such engine passing upon the road, a bell of the ordinary size now in use on locomotive engines, and a steam whistle; and it is hereby made the duty of the engineer, or person in charge of any engine when in motion and approaching any turnpike, highway or town road crossing upon the same level therewith, and in like manner when the road crosses any other traveled place by bridge or otherwise, to sound such whistle at a distance of at least eighty and no farther than one hundred rods from the place of such crossing, and ring such bell continuously until the engine and cars attached thereto shall have passed such road crossing or crossings: Provided, however, that nothing herein shall interfere with the proper observance of any ordinance passed by any city in this state, regulating the management of railroad locomotives and steam whistles thereon, within the limits of such city.

SECTION 2. That every engineer, or person in charge of any such engine, who shall fail to comply with the provisions of the first section of this act, shall be personally liable therefor to a penalty of not less than fifty dollars, nor more than one hundred dollars, to be recovered by civil action, at the suit of the state of Ohio, in the court of common pleas of any county where any such crossing exists; and the company in whose employ such engineer, or person in charge of an engine, may be, as well as the person himself, shall be liable in damages to any person or company who may be injured in person or property by the neglect or act of said engineer or person in

charge of an engine as aforesaid; and such engineer or person in charge of an engine shall also, in case any person be killed by reason of his neglect or failure to comply with the provisions of the section aforesaid, or in case any person sustain bodily injury, not affecting life by reason thereof, then such engineer or person in charge of an engine, as aforesaid, shall be considered guilty of a misdemeanor, and shall, on conviction thereof in the proper court of the county where such bodily injury occurred, be imprisoned in the jail of the county not less than one nor more than twenty months, or be fined in any sum not more than five hundred dollars, or both, at the discretion of the court.

* * * * *

(This Act is the statutory predecessor to Ohio Revised Code Sections 4955.32 and 4955.34.)

## COUNTERSTATEMENT OF THE CASE

This action grows out of an accident which occurred at about 4 P.M. on December 23, 1969 when Robert H. Siegferth, alone in his car, was driving west on Smith Road in Northampton Township, Summit County, Ohio, and collided with a Baltimore and Ohio Railroad Company freight train which was coming from his right, southbound from Cleveland to Akron.

The action was brought by Mr. Siegferth's wife and guardian, Maxine W. Siegferth, for his injuries and for her loss of consortium and support. The case was submitted to a jury which rendered a verdict in favor of the defendant, The Baltimore and Ohio Railroad Company. The Court of Appeals for the Sixth Circuit affirmed the jury verdict. Mrs. Siegferth has filed this petition from that decision.

Although the railroad tracks curved toward the east some distance north of the crossing, there is a sight view

north along the tracks of 529 feet from a point in the center of Smith Road 30 feet east of the east rail of the crossing (A-120). At a point 20 feet east of the east rail the unobstructed sight view is 630 feet (A-119). A whistle post is located along the tracks 1,381 feet north of the crossing (A-122).

The train crew testified that when this southbound train, proceeding at approximately 35 miles per hour (A-54), reached the whistle post, the engineer turned on the bell, started blowing the whistle, and continued to blow the whistle until the crossing was reached (A-59, 102). An outside witness, Paul Ringler, who was completing a telephone conversation in a clubhouse southeast of the crossing, became aware of the train whistle 12 to 15 seconds before the accident (A-164) and heard the whistle blow 3 or 4 times (A-162).

The Railroad fireman who was sitting on the left side of the engine (A-87) saw Mr. Siegferth's westbound car come up to the crossing, stop approximately 15 feet back from the track, and then accelerate and shoot in front of the train (A-92).

Mrs. Nellie Nickson, an eastbound motorist who was called by petitioners as their witness, testified that she had observed the approaching train when she crossed the tracks some seconds earlier. Mrs. Nickson stopped her car some distance east of the crossing and blinked her headlights at an approaching westbound car to warn the driver that a train was coming. After that car went past her she turned her head and watched as it went across the crossing (A-80-82). She then blinked her headlights at a second approaching car, the one being driven by Mr. Siegferth (A-82). She testified:

> "Q. After the second car passed you, did you turn right around and watch it?

"A. Yes, I turned around.

"Q. And did it go up onto the tracks?

"A. All I could see when I turned around the train was hitting the car.

"Q. You mean it just happened that fast?

"A. Yes, it did." (A-82)

There was evidence that on the day preceding the accident the train crew had been on duty for 16 hours (A-98), and that after being relieved from duty the crew had spent an additional 1 hour and 20 minutes deadheading into Cleveland with a new crew, where they were marked off pay at 3:20 A.M. (A-110). There was conflicting evidence indicating the crew may have been on duty as much as 19 hours and 20 minutes on that preceding day, ending at 3:20 A.M. (A-48). After their arrival in Cleveland the crew had 10 hours off duty (A-49). The crew members slept in Cleveland and were wakened about 1 hour before reporting back for duty at 1:20 P.M. on the day of the accident (A-49, 60, 99). The crew had been on duty for only about 2 hours and 40 minutes when the accident occurred at 4 P.M. (A-46), and there was no evidence that any member of the crew was tired at the time of the accident and no evidence that the previous day's work had any relationship to the accident.

In her complaint (A-2) plaintiff alleged various acts of misconduct by the defendant, including that "Defendant failed to duly sound its whistle and ring its bell as its locomotive approached said railroad crossing." The complaint did *not* allege any violation of the Federal Hours of Service Act, 45 U.S.C. § 62.

In its answer (A-8) the defendant denied all allegations of misconduct, and alleged that the accident was caused by the negligence of Robert H. Siegferth.

## REASONS FOR DENYING THE WRIT

### I. The Court of Appeals Correctly Determined that the Law of Ohio as Set Forth by the Ohio Supreme Court Permits Contributory Negligence as a Defense to an Allegation that a Railroad Whistle and Bell were not Sounded.

The decision of the Court of Appeals in the present case was based upon the decision of the same court in *Glinsey v. Baltimore and Ohio Railroad Co.*, 495 F.2d 565 (6th Cir. 1974), and Section 1 of the petition herein is an attack on the *Glinsey* decision. A petition for writ of certiorari from the *Glinsey* decision is presently pending in this Court as Case No. 74-186.

Contrary to petitioners' assertion, the decision in *Glinsey* correctly followed the rulings of the Ohio Supreme Court and the reported decisions of the Ohio Courts of Appeals in holding that contributory negligence is a defense which may be raised in an action brought under the Ohio whistle statutes, Ohio Revised Code Sections 4955.32 and 4955.34.

Nearly 100 years ago the Ohio Supreme Court first considered the effect of the predecessor of those two statutes, then known as 69 Ohio L. 49, in *Pennsylvania Co. v. Rathgeb*, 32 Ohio St. 66 (1877). In that case the Ohio court specifically considered the effect of the language now found in Revised Code Section 4955.34 which petitioners contend precludes the defense of contributory negligence, and explicitly held that the statute does not impose absolute liability upon a Railroad for its violation. In analyzing the statute the Supreme Court said:

> "It may be assumed that the signals were not given as the train approached the crossing. The statute, 69 Ohio L. 49, requires that whistle and bell shall be used, from eighty to one hundred rods from the

crossing, the bell to continue ringing until the road is passed. If these injunctions are not complied with, the statute provides that the company shall be liable in damages to any person injured 'by the neglect or act of said engineer or person in charge of the engine.' i.e., in failing to give the signals.

"It is evident from this language that the failure to give signals must have occasioned the accident, that is, must have been the proximate cause of it before recovery can be had. The injury must happen 'by neglect' of the engineer. If it occurred from some other cause, liability cannot arise therefor, under that statute. Indeed, this statutory duty is not different in the responsibility it imposes upon railroad companies from that arising under the common law. Railroads must be careful. If they neglect this duty and such neglect occasions damage, they are responsible. But, though they may be negligent in some degree, if no damage arises, no liability exists. That is, if the injury complained of was not brought about by the negligence in question, but by something else not chargeable to the company, they cannot be held.

"Before, therefore, plaintiff can recover, because signals were not given, he must cause it to appear that this failure of duty brought about the disaster; for if his own imprudence was the moving cause, he cannot maintain his action, although the company may not have observed the provisions of the statute.

* * * * *

"We think the law must now be considered as well settled, that the traveler approaching a crossing must be upon the lookout for danger. Ordinary care requires that he must look and listen to see if a train is in the vicinity, and if he fails in this, it is not merely evidence of negligence to be considered by the jury, it is itself such negligence as will prevent a recovery." (Pages 71, 72, 73)

That contributory negligence is a defense where the statutory signals have not been given was repeated by the

Ohio Supreme Court in *Pennsylvania Railroad Company v. Rusynik*, 117 Ohio St. 530 (1927), in which the Supreme Court stated:

> "Our attention is called to the statutory violation of the plaintiff in error in failing to give the signals required by law in approaching the crossing, and it is urged that this is negligence *per se*. The case of *Schell v. DuBois, Admr.*, 94 Ohio St. 93, 113 N.E. 664, L.R.A., 1917A, 710 is relied upon, but it is to be noted that the defendant is liable for such violation, provided an injury proximately caused thereby is not directly contributed to by the injured person." (Page 539)

The Ohio Supreme Court has consistently and frequently held that the driver of a motor vehicle about to pass over a railroad grade crossing on a public highway is required both to look and to listen for approaching trains, and the looking and listening must be at such time and place and in such manner as to be effective for that purpose, and that failure by a motorist to do so constitutes contributory negligence, barring his recovery whether or not the Railroad sounded the statutory signals. For examples, see *North v. Pennsylvania R.R.*, 9 Ohio St. 2d 169 (1967); *Tidd v. New York Cent. R.R.*, 132 Ohio St. 531 (1937); *Pennsylvania R.R. v. Moses*, 125 Ohio St. 621 (1932); *Detroit, T. & I. R.R. v. Rohrs*, 114 Ohio St. 493 (1926); and *Cleveland, C., C. & St. L. Ry. v. Lee*, 111 Ohio St. 391 (1924); as well as *Pennsylvania R.R. v. Rusynik, supra*, 117 Ohio St. 530 (1927) and *Pennsylvania Co. v. Rathgeb, supra*, 32 Ohio St. 66 (1877).

The Ohio Courts of Appeals have consistently reached the same conclusion. For examples, see *Stormont v. New York Cent. R.R.*, 1 Ohio App. 2d 414 (Franklin Cty. 1964); *Hall v. New York Cent. R.R.*, 111 Ohio App. 5 (Huron Cty. 1960); *Farmer v. Pittsburgh, C., C. & St.*

*L. Ry.*, 83 Ohio App. 321 (Darke Cty. 1947); *Ballmer v. Pennsylvania Rd. Co.*, 59 Ohio App. 221 (Lucas Cty. 1938); and *Benschoter v. New York Cent. R.R.*, 30 Ohio App. 276 (Lucas Cty. 1928).

There is no reported Ohio decision to the contrary. Despite petitioners' assertion, the Ohio law is not in "a state of flux." There is no reason to believe that the Ohio Supreme Court would depart from the established rule that contributory negligence is a defense to an action alleging a violation of Ohio's whistle statutes.

As support for their position petitioners assert two cases, *McCallie v. New York Central R.R.*, 23 Ohio App. 2d 152 (Lorain Cty. 1969), and the unreported decision in *Carnahan v. Akron-Barberton Beltline R.R.* (Common Pleas, Summit County, 1973), neither of which is authority for petitioners' proposition.

*McCallie* did not involve the Ohio whistle statutes (Ohio Revised Code Sections 4955.32 and 4955.34). Instead, it dealt with a different provision of the Ohio Revised Code, Section 4955.33, which requires a crossbuck sign at a crossing. The *McCallie* decision specifically recognized that its reasoning did not apply to cases involving the whistle statutes, stating that "negligence and contributory negligence are issues that may arise" in cases based on the failure of an engineer to sound a warning.

The unreported Common Pleas Court decision in *Carnahan v. Akron-Barberton Beltline R.R.* is strikingly similar to the South Carolina Common Pleas decision which this Court held was not binding upon the Court of Appeals in *King v. Order of United Commercial Travelers of America*, 333 U.S. 153 (1948). The *Carnahan* decision was made in reliance upon the District Court decision in *Glinsey v. Baltimore and Ohio Railroad Co.*, 356 F. Supp. 984 (N.D. Ohio 1973) which was itself reversed by the

Court of Appeals for the Sixth Circuit. Petitioners' position that the *Carnahan* decision should have prevented the Court of Appeals from reversing the District Court's decision in *Glinsey* is a bootstrap argument. The *Carnahan* decision is unreported. As this Court said in *King v. Order of United Commercial Travelers of America, supra:*

> "To hold that federal courts must abide by Common Pleas decisions might well put a premium on the financial ability required for exhaustive screening of the judgment rolls or for the maintenance of private records. In cases where the parties could not afford such practices, the result would often be to make their rights dependent on chance; for every decision cited by counsel there might be a dozen adverse decisions outstanding but undiscovered." (Pages 161-162)

But, unlike the situation presented in *King*, there is an Ohio statute, Ohio Revised Code Section 2503.20, which provides that the official reporter of the Ohio Supreme Court shall prepare for publication "such opinions and decisions of any of the inferior courts, as may be designated by him and approved by the chief justice of the supreme court." That section then goes on to provide:

> "* * *all such cases must be reported in accordance with this section before they shall be recognized by and receive the official sanction of any court."

The *Carnahan* decision was not reported either officially or unofficially and under Ohio Revised Code Section 2503.20 it has no precedential value. See *Bevan v. Century Realty Co.*, 64 Ohio App. 58 (Mahoning Cty. 1940), *app. dismissed*, 136 Ohio St. 549 (1940).

This Court's decision in *King* that such a state Common Pleas Court decision is not binding upon the Court of Appeals was restated by this Court in *Commissioner of Internal Revenue v. Bosch*, 387 U.S. 456 (1967), and there

are numerous decisions by the Courts of Appeals recognizing that such unreported lower court decisions are not binding. For examples, see *Roginsky v. Richardson-Merrell, Inc.*, 378 F.2d 832 (2nd Cir. 1967); *Gerr v. Emrick*, 283 F.2d 293 (3rd Cir. 1960), *cert. denied*, 365 U.S. 817 (1961); *Roland Electrical Co. v. Black*, 163 F.2d 417 (4th Cir. 1947), *cert denied*, 333 U.S. 854 (1948); *American Fidelity and Casualty Co. v. Indemnity Insurance Co. of North America*, 308 F.2d 697 (6th Cir. 1962), *cert. denied*, 372 U.S. 942 (1963); and *Village of Brooten v. Cudahy Packing Co.*, 291 F.2d 284 (8th Cir. 1961).

The Court of Appeals in *Glinsey v. Baltimore and Ohio Railroad Co.*, 495 F.2d 565 (6th Cir. 1974), *supra*, did not, as petitioners suggest, refuse to follow the current Ohio law. Instead, the Court of Appeals in that decision carefully considered Ohio's whistle statutes and based its determination of Ohio law upon the numerous decisions of the Ohio Supreme Court which hold that contributory negligence is a defense in cases such as the one presented. In its decision the Court of Appeals stated:

> "Of course, it is not clear from the face of the Ohio whistle-bell statute whether this conclusion mandates a contributory negligence instruction or merely requires a plaintiff to prove proximate causation. The Ohio Supreme Court has, however, resolved this question. See *Rathgeb*, *supra*.
>
> * * * * *
>
> "Given this wealth of Ohio judicial support for the concept of contributory negligence in railroad crossing cases, we conclude that the District Court erred in denying an instruction on that defense and in excluding evidence to bolster the railroad's contentions to that end. Appellee's novel argument would have us discard a century of case law that has weaved contributory negligence into the tapestry of Ohio railroad accident law. We do not believe that the Ohio

Supreme Court would do this, despite the force of Appellee's argument, and we may not do that which we believe Ohio's highest court would refuse to do."

In view of the careful analysis by the Court of Appeals in *Glinsey* of Ohio law, the numerous Ohio authorities supporting the conclusion reached in *Glinsey* and the complete absence of any authority having precedential effect to the contrary, we respectfully suggest that this Court should follow its general policy and "accept the determination of local law by the Court of Appeals." *Ragan v. Merchants Transfer & Warehouse Co.*, 337 U.S. 530, 534 (1949).

## II. There Was No Issue in This Case Concerning the Hours of Service Act, and the Trial Court Correctly Refused to Instruct the Jury that a Violation of Such Act Imposes Absolute Liability in a Case Brought by One Who Is Not An Employee.

The complaint in this action did not allege any violation of the Hours of Service Act, 45 U.S.C. § 62. There was no evidence before the jury of any relationship between the accident and the number of hours worked on the previous day by the Railroad crew, and there was no issue for the jury to consider concerning that Act.

The petitioners submitted a proposed instruction to the jury, stating that the Railroad had violated the Act and directing a verdict for the plaintiffs, without consideration of contributory negligence, if such violation was a direct or proximate cause of the collision (A-165)

But the Hours of Service Act does not result in such absolute liability or in the elimination of contributory negligence as a defense in cases not brought by an employee. The Act contains no liability provisions itself. As Mr. Jus-

tice Holmes stated in *Atchison, Topeka and Santa Fe Railroad v. Swearingen*, 239 U.S. 340 (1915):

> "The statute that excludes the defenses of contributory negligence and assumption of risk in such a case is not the hours of labor act itself, but the subsequent employers' liability act of April 22, 1908, (now 45 U.S.C. Sec. 53)."

The defense of contributory negligence is precluded only in actions brought by an employee, and then only by virtue of the Federal Employers' Liability Act, 45 U.S.C. Sec. 53. That statute, by its terms, applies only to "an employee."

The Hours of Service Act is analogous to the Safety Appliance Act, 45 U.S.C. Sec. 2. That Act, like the Hours of Service Act, did not create a Federal cause of action for either employees or non-employees seeking damages for injuries resulting from a railroad's violation of the Act. In actions by employees under either Act, the defense of contributory negligence is precluded by virtue of the Employers' Liability Act. In a case brought by a non-employee under the Safety Appliance Act, *Crane v. Cedar Rapids & Iowa City Railroad Company*, 395 U.S. 164 (1969), this Court carefully distinguished between the rights of an employee and the rights of a non-employee in such actions. The Court stated:

> "In such actions, the injured employee is required to prove only the statutory violation and thus is relieved of the burden of proving negligence, * * * He is not required to prove common-law proximate causation but only that his injury resulted 'in whole or in part' from the railroad's violation of the Act, 45 U.S.C. §51; * * * and the railroad is deprived of the defenses of contributory negligence and assumption of risk, 45 U.S.C. §§ 53, 54.
>
> "In contrast, the non-employee must look for his remedy to a common-law action in tort, which is to

say that he must sue in a state court, in the absence of diversity, to implement a state cause of action. * * * '[T]he right to recover damages sustained . . . through the breach of duty sprang from the principle of the common law . . . and was left to be enforced accordingly . . .' Moore v. C. & O. R. Co., supra, at 215, 78 L. Ed at 762. In consequence, we have consistently held that under the present statutory scheme the definition of causation and the availability of the defenses of assumption of risk and contributory negligence are left to state law. Schlemmer v. Buffalo, R. & P. R. Co., 220 US 590, 55 L Ed 596, 31 S Ct. 561 (1911); Fairport, P. & E. R. Co. v. Meredith, supra, at 598, 78 L Ed at 1451; Moore v. C. & O. R. Co., supra, at 215, 78 L Ed at 762; Tipton v. Atchison, T. & S. F. R. Co., 298 US 141, 80 L Ed 1091, 56 S Ct. 715, 104 ALR 831 (1936). Our examination of the relevant legislative materials convinces us that this line of decisions should be reaffirmed."

This Court's reasoning in *Crane* is equally applicable where a violation of the Hours of Service Act is alleged.

Petitioners' argument that a violation of the Hours of Service Act imposes absolute liability in a case brought by a non-employee is based upon a false analogy to other statutes which contain language not comparable to that of the Hours of Service Act or the Federal Employers' Liability Act. For instance, the petitioners rely upon the Death on the High Seas Act, 46 U.S.C. § 761, *et seq.*, and cases decided under it. But in writing that Act Congress did not limit its benefits to "an employee" as in the Federal Employers' Liability Act, and, instead, specifically made the Act applicable to the death of "a person" (46 U.S.C. § 761). And Congress did not eliminate the defense of contributory negligence in that Act. Rather, it provided in 46 U.S.C. § 766 that the Court may reduce the recovery depending on the degree of negligence attributable to the

decedent. Subject to any constitutional limitations upon its power, Congress could have made the provisions of the Federal Employers' Liability Act applicable to an injury to "a person" but chose not to do so and made the Act applicable only to injuries to "an employee."

The cases cited by the petitioners relating to the power of the Courts to provide remedies under the Securities Exchange Act of 1934 (*J. I. Case v. Borak*, 377 U.S. 426 (1964)), and relating to the applicability of the Limitation Statutes, 46 U.S.C. § 183 and 46 U.S.C. § 192, to a carrier which had operated its ship in violation of the law (*The Delani*, 105 F.2d 413 (9th Cir. 1939)) have no apparent relationship to the question of whether contributory negligence may be asserted as a defense under the Hours of Service Act.

Finally, petitioners argue in Section III of their petition that it is an unreasonable and unconstitutional discrimination for Congress to eliminate the defense of contributory negligence or introduce the doctrine of comparative negligence in cases brought by railroad employees under the Federal Employers' Liability Act when Congress did not do the same thing in cases brought by non-employees.

If petitioners were correct in this astonishing assertion, the passage of the Federal Employers' Liability Act would have terminated the defense of contributory negligence and have introduced the comparative negligence doctrine in any claim made by any non-employee resulting from the negligence of a railroad employee, or the abrogation of the contributory negligence defense in cases brought by employees would be unconstitutional. We submit that there is nothing unreasonable about placing railroad employees in a different category, as respects claims for railroad related injuries, from members of the general public. The exposure of railroad employees to the risk of possible

injury is far greater than the exposure by members of the public at large to such risk of injury. This Court has held the classification to be reasonable. *Mondou v. New York, New Haven and Hartford R.R. Co.* 223 U.S. 1 (1912) Similar increased risk of injury in their job is faced by other industrial employees. As a result, workmen's compensation acts have been passed providing benefits for injured employees not available to members of the general public who suffer the same injury. Petitioners apparently would ask this Court to declare unconstitutional any benefits for injured workers not available to members of the public. Their argument would be completely without merit even if the Hours of Service Act were an issue in the present case.

We respectfully submit that the Hours of Service Act was not an issue in this case, and that in any event that Act does not abrogate the defense of contributory negligence in cases brought by non-employees.

## CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIORARI DENIED